

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs January 8, 2008

**STATE OF TENNESSEE v. PAMELA CLIMER**

**Direct Appeal from the Circuit Court for Cannon County**  
**Nos. F20-36, F06-76 James K. Clayton, Jr., Judge**

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**No. M2007-01670-CCA-R3-CD - Filed April 28, 2008**

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The defendant, Pamela Climer, pled guilty to one count of failure to appear, a Class E felony, and was sentenced to one year in the Department of Correction. While incarcerated, although it is not clear where, she sent to the court clerk a letter requesting a suspended sentence hearing. At the hearing, the trial court held that it lacked jurisdiction to consider her request because the defendant had been transferred to the custody of the Department of Correction. The defendant argues that this determination was erroneous because she was not transferred to the Department of Correction until after she filed her request. However, because the appellate record is silent on where the defendant was held when she filed her request, we must presume that the trial court's ruling was correct and affirm its judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the court, in which DAVID G. HAYES and J.C. McLIN, JJ., joined.

Kenneth R. McKnight, Assistant Public Defender, for the appellant, Pamela Climer.

Robert E. Cooper, Jr., Attorney General and Reporter; Preston Shipp, Assistant Attorney General; William C. Whitesell, Jr., District Attorney General; and David L. Puckett, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

In 2000, the defendant pled guilty to one count of sale of a Schedule IV controlled substance and one count of sale of a counterfeit controlled substance. She received an effective sentence of three years, to be served on probation. After twice violating her probation, she was ordered to serve her original sentence in confinement. In 2005, she was furloughed to attend a substance abuse rehabilitation program and ordered to return to the Cannon County Jail upon completion of the

program. She did not return to the jail as ordered, and on December 7, 2006, pled guilty to one count of failure to appear. She was sentenced to one year in the Department of Correction to be served consecutively to her three-year sentence for sale of a Schedule IV controlled substance and sale of a counterfeit controlled substance.

On June 12, 2007, the defendant sent to the court clerk a letter requesting a suspended sentence hearing and the appointment of counsel. The court scheduled a hearing on the motion for July 13, 2007, and entered an order on July 3, 2007, directing that the defendant be transported from the Department of Correction to the custody of the Cannon County sheriff so she could attend the hearing. The brief hearing on the defendant's request for a suspended sentence consisted solely of arguments of counsel. The record does not reveal why the defendant apparently was not present, and no request was made for a continuance. The State contended that the court could not entertain the motion because the defendant was in the custody of the Department of Correction. Defense counsel responded that, when the motion was filed, the defendant was housed at the Cannon County Jail, but no proof was presented to show that this was the case. The trial court ruled that it could not hear the motion because the defendant was in the custody of the Department of Correction:

[I]t's always been my understanding that once [defendants] were transported to the Department of Corrections [sic], that I did lose jurisdiction even if they did file [a motion for suspended sentence] previously.

I mean, somebody could file previously the day after they were sentenced, and it might be two or three months before we could get it heard. And if I didn't put down a suspended sentence order at the time, I don't think I would be able to come back later and say, hey, they shouldn't have sent her up there. We made a mistake. We need to bring her back so we can turn her loose.

I just don't think that's the idea behind the law. I think the law is pretty clear about once she has been transferred to the Department of Corrections, that that's the last of my jurisdiction unless for some particular reason she gets back in my jurisdiction with some new charge or something.

### ANALYSIS

The defendant argues that the trial court erred in finding that it lacked jurisdiction to hear her motion for a suspended sentence because she filed the motion before she was transferred to the custody of the Department of Correction. She acknowledges this court's holding in State v. Elvin Williams, No. M2006-00287-CCA-R3-CO, 2007 WL 551289, at \*2 (Tenn. Crim. App. Feb. 22, 2007), perm. to appeal denied (Tenn. May 14, 2007), that when a defendant is transferred to the physical custody of the Department of Correction *prior* to requesting a sentence reduction, Tennessee Code Annotated section 40-35-212 divests the trial court of jurisdiction to modify the defendant's sentence. She argues that a logical reading of Elvin Williams compels us to hold that the inverse is also true; that is, if a defendant moves for a sentence reduction before being transferred to the

Department of Correction, a subsequent transfer to the Department does not deprive the trial court of jurisdiction to modify the defendant's sentence. In response, the State argues that section 40-35-212 mandates that the trial court loses jurisdiction to modify a defendant's sentence whenever the defendant is transferred to the Department of Correction, with no exception based on when the motion for suspended sentence is filed or when the case is docketed.

The problem with the defendant's claim is that she presented no proof at the hearing to show where she was housed when she filed her request for a suspended sentence. We note that the technical record contains a copy of what appears to be a transportation order, dated July 3, 2007, directing that the defendant be returned from the Department of Correction. Even if we were to assume that this order is properly in the record, the fact remains that there is no proof as to when, between the December 7, 2006, plea of guilty and the July 3, 2007, order returning the defendant from the Department of Correction, the defendant was transferred from the Cannon County Jail to the Department of Correction. It is the duty of the appellant to prepare a fair, accurate, and complete record on appeal. Tenn. R. App. P. 24(b). When necessary parts of the record are not included, we must presume that the trial court's ruling is correct. State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). Therefore, we affirm the judgment of the trial court that it lacked jurisdiction to hear the defendant's motion.

### **CONCLUSION**

Based on the foregoing reasoning and authorities, the judgment of the trial court is affirmed.

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ALAN E. GLENN, JUDGE